IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. DALE MICHAEL LUCAS, Defendant.	No. 06-CR-1047-LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NUMBER 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NUMBER 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, the stipulations of the parties and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.

2. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.

3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

5. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NUMBER 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard evidence that some witnesses were once convicted of a crime. You may use that evidence only to help you decide whether to believe these witnesses and how much weight to give their testimony.

INSTRUCTION NUMBER 8

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his opinions on matters in that field and may also state the reasons for his opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NUMBER 9

You have heard testimony that the defendant made statements to law enforcement officials in this case. It is for you to decide: (1) whether the defendant made the statements and (2) if so, how much weight you should give to them. In making these two decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NUMBER 10

The government and the defendant have stipulated – that is, they have agreed – that certain facts are as counsel have stated. You must therefore treat those facts as having been proved.

INSTRUCTION NUMBER 11

You have heard a certain category of evidence called "other acts" evidence. Here you have heard evidence that the defendant was involved in the possession of precursors to make methamphetamine and the manufacture of methamphetamine at times other than charged in the Indictment. You may not use this "other acts" evidence to decide whether the defendant carried out the acts involved in the crimes charged in the Indictment. In order to consider "other acts" evidence at all, you must first unanimously find, beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crimes charged in the Indictment. If you make this finding, then you may consider the "other acts" evidence to decide the defendant's intent and knowledge. "Other acts" evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard of proof than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you must disregard such evidence.

Remember, even if you find that the defendant may have committed acts other than those charged in the Indictment, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed other acts. The defendant is on trial only for the crimes charged, and you may consider the evidence of "other acts" only on the issue of his intent and knowledge.

INSTRUCTION NUMBER 12

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

INSTRUCTION NUMBER 13

The Indictment in this case charges the defendant with three separate offenses.

Under Count 1, the Indictment charges that, on or about December 2, 2003, the defendant did knowingly and intentionally attempt to manufacture methamphetamine, a Schedule II controlled substance.

Under Count 2, the Indictment charges that, on or about December 2, 2003, the defendant knowingly possessed, in and affecting commerce, a firearm, after being previously convicted of a crime punishable by imprisonment for a term exceeding one year.

Under Count 3, the Indictment charges that, on about December 2, 2003, the defendant did knowingly use and carry a firearm during and in relation to a drug trafficking crime and did knowingly possess a firearm in furtherance of a drug trafficking crime.

The defendant has pleaded not guilty to the crimes with which he is charged.

As I told you at the beginning of trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find a defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NUMBER 14

Count 1 of the Indictment charges the defendant with attempting to manufacture methamphetamine. This offense has three essential elements, which are:

One, on or about December 2, 2003, the defendant attempted to manufacture methamphetamine, a Schedule II controlled substance;

Two, the defendant knew that the material he intended to manufacture was a controlled substance, i.e., methamphetamine; and

Three, the defendant voluntarily and intentionally carried out some act that was a substantial step toward manufacturing methamphetamine.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of attempting to manufacture methamphetamine; otherwise you must find the defendant not guilty of the crime charged in Count 1 of the Indictment.

INSTRUCTION NUMBER 15

You are instructed as a matter of law that methamphetamine is a Schedule II controlled substance. You must ascertain whether or not the substance in question was methamphetamine. In so doing, you may consider all evidence in the case which may aid in the determination of that issue.

INSTRUCTION NUMBER 16

The crime charged in Count 1 of the Indictment is attempting to manufacture methamphetamine. A person may be found guilty of attempting to manufacture methamphetamine if he intended to manufacture methamphetamine and voluntarily and intentionally carried out some act which was a substantial step toward the manufacture.

A substantial step must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute. Crimes such as attempt to manufacture methamphetamine require a defendant to engage in numerous preliminary steps which brand the enterprise as criminal.

INSTRUCTION NUMBER 17

Count 2 of the Indictment charges the defendant with being a felon in possession of a firearm. This offense has three essential elements, which are:

One, the defendant was convicted of a felony, that is, a crime punishable by imprisonment for a term exceeding one year;

Two, on or about December 2, 2003, the defendant knowingly possessed a firearm, that is, an Intratech Model Tec-22, .22 caliber semi-automatic handgun; and

Three, at some time prior to his possession of the firearm, the firearm was transported across a state line.

You are instructed that the government and the defendant have stipulated, that is agreed, that the defendant has been convicted of a crime punishable by imprisonment for more than one year under the laws of the State of Iowa, and you must consider the first essential element as proven.

You are instructed that the government and the defendant have stipulated, that is agreed, that the firearm in question was not manufactured in the State of Iowa and would have traveled in interstate commerce to arrive in Iowa, and you must consider the third essential element as proven.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of being a felon in possession of a firearm; otherwise you must find the defendant not guilty of the crime charged in Count 2 of the Indictment.

INSTRUCTION NUMBER 18

Count 3 of the Indictment charges the defendant with using or carrying a firearm during and in relation to a drug trafficking crime or possessing a firearm in furtherance of a drug trafficking crime. This offense has three essential elements, which are:

One, the defendant committed the crime of attempting to manufacture methamphetamine as charged in Count 1;

Two, on about December 2, 2003, the defendant did one or more of the following:

(1) the defendant used or carried a firearm during and in relation to a drug trafficking crime, and/or

(2) the defendant possessed a firearm in furtherance of a drug trafficking crime; and

Three, the firearm was an Intratech, Model Tec-22, .22 caliber semi-automatic handgun.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of using or carrying a firearm during and in relation to a drug trafficking crime or possessing a firearm in furtherance of a drug trafficking crime; otherwise you must find the defendant not guilty of the crime charged in Count 3 of the Indictment.

INSTRUCTION NUMBER 19

The term "firearm" means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

The phrase "used a firearm" means that the firearm was actively employed in the course of the commission of the drug trafficking crime. You may find that the firearm was used during the commission of the drug trafficking crime if you find that it was brandished, displayed or fired or attempted to be fired.

You may find that a firearm was "carried" during the commission of the drug trafficking crime if you find that the defendant had a firearm on his person or was transporting a firearm in a vehicle.

The phrases "during and in relation to" and "possessed in furtherance of" mean the firearm must have some purpose or effect with respect to the drug trafficking crime; its presence or involvement cannot be the result of accident or coincidence. The firearm must facilitate or have the potential to facilitate the drug trafficking crime.

INSTRUCTION NUMBER 20

"Possession" is an element of the offenses charged in Counts 2 and 3. The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time is then in actual possession of it.

A person who, although not in actual possession, has both the power and intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions, it includes "actual" as well as "constructive" possession and also "sole" as well as "joint" possession.

INSTRUCTION NUMBER 21

You will note the Indictment charges that offenses were committed "on or about" or "on about" a certain date. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER 22

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER 23

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER 24

An act is done "knowingly" if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant's acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER 25

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER 26

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER 26 (Cont'd)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NUMBER 27

Attached to these instructions you will find three Verdict Forms. These Verdict Forms are simply the written notice of the decisions that you reach in this case. The answers to these Verdict Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Forms, your foreperson will fill out the Forms, sign and date them and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

February 6, 2007
DATE

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA